additional to make it meet the guaranteed requirements. In an action for breach of warranty judgment was entered against the defendant for $690 and against the contractor for $464. *Held*, that the proper damages were the difference between the purchase price and the reasonable value of the system as installed. *Nunn* v. *Brillhart*, 242 S. W. 459 (Tex. Civ. App.).

Where the contractor fails to comply with a request for removal, the buyer may have the article removed, charging this expense to the seller, or retain it, and bring an action for breach of warranty against the seller or his surety. *Rochevot* v. *Wolf*, 96 App. Div. 506, 89 N. Y. Supp. 142. Damages for breach of warranty are ordinarily the difference between the value of the article as warranted and its value as delivered. *Archer* v. *Milwaukee Auto Engine & Supply Co.*, 144 Wis. 476, 129 N. W. 598. The vendee, however, must take reasonable measures to mitigate damages. *Rochevot* v. *Wolf*, *supra*. The reason for this is that he is not legally damaged by those consequences which he could have avoided by the use of due care. See SEDGWICK, DAMAGES, 9 ed., § 202. He may then recover reasonable amounts expended in his attempts to mitigate damages. *Benjamin* v. *Hilliard*, 23 How. (U. S.) 149; *Strawn* v. *Coggswell*, 28 Ill. 457; *Phelan* v. *Andrews*, 52 Ill. 486. Unreasonable expenditures will be disallowed. *Le Blanche* v. *London & N. W. Ry. Co.*, 1 C. P. Div. 286. *Cf. Burtraw* v. *Clark*, 103 Mich. 383, 61 N. W. 552. But if reasonable, they should not be disallowed because unsuccessful or ultimately more expensive than the initial loss. *Whitehead & Atherton Machine Co.* v. *Ryder*, 139 Mass. 366, 31 N. E. 736; *Edwards Mfg. Co.* v. *Stoops*, 54 Ind. App. 361, 102 N. E. 980; *Watson* v. *Proprietors of Lisbon Bridge*, 14 Me. 201. But see *Wilson* v. *Seattle Ry. Co.*, 55 Wash. 656, 104 Pac. 1114; *Gillett* v. *Western R. R. Corp.*, 8 Allen (Mass.), 560. The buyer should not be required to act at his peril in his attempt to mitigate damages. *Kadish* v. *Young*, 108 Ill. 170. *Contra*, *Missouri Furnace Co.* v. *Cochran*, 8 Fed. 463 (Circ. Ct. W. D. Pa.). If the action of the plaintiff in the principal case, in view of all the circumstances, was reasonable, the liability of the surety as well as the vendor should have been measured by the expenditures incurred in making the system meet the warranted requirements. The decision of the lower court should not have been reversed unless plainly contrary to the evidence.

DEEDS — RESTRICTIVE COVENANT — LOT NOT TO BE OCCUPIED BY A COLORED PERSON. — A lot, part of a plat, was sold subject to the restriction that it "shall not be occupied by a colored person." The defendants, colored persons, contracted with notice to buy the lot. The plaintiffs, owners of other lots in the same subdivision, filed a bill to restrain the defendants from occupying the premises. From a decree enjoining them from so doing, the defendants appealed on the ground that the restriction was void as contrary to public policy and the Fourteenth Amendment. *Held*, that the decree be affirmed. *Parmalee* v. *Morris*, 188 N. W. 330 (Mich.).

Following the example of California, courts are henceforth likely to distinguish restraints on alienation from restraints on use or occupancy of property. *Los Angeles Investment Co.* v. *Gary*, 181 Cal. 680, 186 Pac. 596. The former, in so far as they are total restraints in a purported conveyance of fee simple, are void. See LIT. § 360; CO. LIT. 206b; GRAY, RESTRAINTS ON ALIENATION, 2 ed., §§ 13, 23. Nor is a restraint on alienation valid because limited as to time. *Mandlebaum* v. *McDonell*, 29 Mich. 78, 107. But *cf. Wallace* v. *Smith*, 113 Ky. 263, 68 S. W. 131. The more difficult question is presented when the restraint is limited as to persons. On this point the authorities are in conflict. *Koehler* v. *Rowland*, 275 Mo. 573,

205 S. W. 217; *Title Trust Co.* v. *Garrott*, 42 Cal. App. 152, 183 Pac. 470. This much can be said: a reasonable restriction on the use or occupancy of property is not considered void on grounds of "public policy" other than the policy against burdening land with incumbrances. *Wakefield* v. *Van Tassell*, 202 Ill. 41, 66 N. E. 830; *Los Angeles Investment Co.* v. *Gary*, *supra*. Nor is such a restriction as that in the principal case in violation of the Fourteenth Amendment, which applies to states, not individuals. *Civil Rights Cases*, 109 U. S. 3, 11. In both kinds of restrictions, on alienation and on use, the form of the restriction, whether covenant or condition, is immaterial. See Joseph Warren, "Progress of the Law — Estates and Future Interests," 34 HARV. L. REV. 639, 652. But it seems that there is an inconsistency in giving effect to restrictions on occupancy while refusing to do so in cases of restraints on alienation. *Cf. Los Angeles Investment Co.* v. *Gary*, *supra*. This inconsistency becomes more apparent when it is realized that an exclusive occupancy practically amounts to a tenancy or a holding of possession as a grantee. See 8 CAL. L. REV. 188.

EQUITY — MAXIMS — CLEAN HANDS — LIMITATION OF THE DOCTRINE. — The defendant, X, contracted to buy of B land on which there was a first mortgage, for the avowed purpose of establishing a coal business. The plaintiff, A, owner of the adjacent premises, knowing of the contract and the purpose, entered into a restrictive covenant with B prohibiting the establishment of a coal business on the land. In a suit against B for breach of his contract X recovered a judgment which was satisfied. A had purchased the first mortgage, and in a suit to foreclose it the land was sold, upon motion by A, subject to the covenant to X whose objections to the covenant were ignored. A now brings his bill to have X restrained from breaking the covenant. Relief was refused below on the ground that A's hands were not clean. *Held*, that the decree be reversed. *Rubel Bros.* v. *Dumont Coal Co.*, 192 N. Y. Supp. 705 (Sup. Ct.).

The acts of A were of the sort that justifies invoking the doctrine of "clean hands." *Weegham* v. *Killifer*, 215 Fed. 168 (W. D. Mich.), aff'd, 215 Fed. 289 (6th Circ.); *Carmen* v. *Fox Film Corp.*, 269 Fed. 928 (2nd Circ.), *certiorari* denied, 255 U. S. 569. See 31 HARV. L. REV. 492. But *cf. Dering* v. *Earl of Winchelsea*, 1 Cox 318, 319. But the case can be justified on either of two grounds. The doctrine of "clean hands" embodies the concept that equity will not tolerate the use of its remedies to further a wrong. See *Primeau* v. *Granfield*, 180 Fed. 847, 852 (S. D. N. Y.). In order, however, that wrongful conduct may be aided it must be connected with the subject matter of the action. *Lyman* v. *Lyman*, 90 Conn. 399, 97 Atl. 312; *Upchurch* v. *Anderson*, 52 S. W. 917 (Tenn.). See *Bentley* v. *Tibbals*, 223 Fed. 247 (2nd Circ.). In the principal case the relief would not be an aid to plaintiff's wrong. The restriction placed upon the land at the foreclosure sale is distinct from the one attempted to be obtained in prejudice of the defendant's original contract. Secondly, of his two remedies under the contract X elected an action for damages. When his judgment was satisfied he no longer had any rights with respect to the land. *McLendon Bros.* v. *Finch*, 2 Ga. App. 421, 426, 58 S. E. 690, 693. See Amos and Benedict Dienard, "Election of Remedies," 6 MINN. L. REV. 341, 359. A's wrong consisted in his attempt to impair X's rights in the land. The covenant ceased to be a wrong simultaneously with X's termination of his rights. Thereafter equity by enforcing the covenant would not be aiding the plaintiff's wrong.

HABEAS CORPUS — STATE AND FEDERAL JURISDICTION — PRIVILEGE OF FEDERAL PRISONER TO RESIST TRIAL BY THE STATE. — Ponzi was in